

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

WENDELL R. AYERS, )  
v. Plaintiff, ) NO. CIV-13-1211-HE  
MARY FALLIN, *et al.* )  
Respondents. )

## **ORDER**

Plaintiff Wendell R. Ayers, appearing *pro se* and *in forma pauperis*, initiated this suit pursuant to 42 U.S.C. § 1983. Consistent with 28 U.S.C. § 636(b)(1)(B), the case was referred to Magistrate Judge Suzanne Mitchell, who recommends that it be dismissed without prejudice for failure to prosecute. By failing to object to the Report and Recommendation, plaintiff has waived his right to appellate review of the factual and legal issues it addressed. United States v. One Parcel of Real Property, 73 F.3d 1057, 1059-60 (10th Cir. 1996); see 28 U.S.C. § 636(b)(1)(C). Accordingly, the court adopts the Report and Recommendation of Magistrate Judge Suzanne Mitchell [Doc. #33] and **DISMISSES** this case without prejudice to refiling.

## IT IS SO ORDERED.

Dated this 19th day of December, 2014.

*Joe Heaton*  
JOE HEATON  
UNITED STATES DISTRICT JUDGE